



Virginia
Regulatory
Town Hall

Notice of Intended Regulatory Action
Agency Background Document

Agency Name:	Department of Motor Vehicles
VAC Chapter Number:	24 VAC 20-70
Regulation Title:	Regulations Governing Requirements for Proof of Residency to Obtain a Virginia Driver's License or Photo Identification Card
Action Title:	Amendment
Date:	November 15, 2001

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

Purpose

Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.

The regulatory action will address the processes and requirements by which driver's licenses, commercial driver's licenses, endorsements, photo-identification cards, learner's permits and/or temporary permits are issued by the Department of Motor Vehicles. (DMV). The subject regulations were implemented in 1994 in response to legislation which created a new residency requirement for obtaining a Virginia driver's license or identification card and which permitted, but did not require, the agency to promulgate regulations pertaining to proof of residency. The DL-51 was included as an acceptable means for proving residency in order to enable immigrants, who may have left their native country under extreme circumstances and without identification to legitimately apply for and receive driver's licenses and identification cards.

Over the last few years the DL-51 has been subject to widespread abuse and fraud, primarily by an industry consisting of criminal organizations and facilitators who assist immigrants in obtaining Virginia driver's license and/or identification cards by fraudulent means. On September 21, 2001 an emergency regulation was enacted to amend 24VAC20-70-30 by repealing subsection (D) thereby removing the Residency Certification (DL-51) as a document that may be utilized for providing proof of residency in the Commonwealth for the driver's

license and identification card application process. This regulatory action is intended to repeal subsection D on a permanent basis, which will have the effect of eliminating acceptability of the DL-51 as a document for proving residency in the driver's license and identification card application process.

Basis

Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.

Pursuant to Va. Code § 46.2-203, the Department of Motor Vehicles (DMV) is authorized to adopt regulations necessary to carry out the laws administered by the Department. Furthermore, pursuant to Va. Code § 46.2-323 and 46.2-345, DMV may adopt regulations to determine the process by which applicants prove that they are residents of the Commonwealth. In each of the foregoing instances, the authority to promulgate regulations is permissive. Because the Commissioner's authority to promulgate regulations in these matters is permissive, the Commissioner also has, by implication, the authority to modify, amend, or repeal any regulations promulgated under such authority.

Substance

Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied.

DMV is proposing this regulatory action, which consists of permanent repeal of acceptability and use of the DL-51 in the process by which driver's licenses, commercial driver's licenses, endorsements, photo-identification cards, learner's permits and/or temporary permits are issued by DMV. Specifically this regulatory action will repeal 24 VAC 20-70-30 (D).

This regulation is necessary to address an imminent threat to public safety and is essential to protect the safety and welfare of citizens of the Commonwealth and to protect and enhance national security.

In recent years the process for obtaining a driver's license and photo-identification card has been subjected to widespread abuse and fraud, primarily by an industry consisting of criminal organizations and facilitators who assist non-Virginia residents, many of them immigrants, in obtaining Virginia driver's licenses and/or identification cards by fraudulent means. In the recent past, these organizations and facilitators victimized immigrants by charging them large sums for

assistance in obtaining driver's licenses and identification cards and by encouraging the immigrants to, in the application process, submit falsified Residency Certifications (DL-51s) which were executed by facilitators or their agents who attested to the false information contained therein. The magnitude of this abuse is evidenced by the recent trial and conviction of a facilitator in U.S. District Court. This facilitator had established a lucrative business, in which thousands of victims were brought to Virginia from New Jersey, New York and Maryland on a routine basis in order to obtain a Virginia driver's license or identification card by fraudulent means. The primary defense put forth by the defendant in the case was the assertion that DMV promoted or encouraged this activity by virtue of the fact that the agency had created and permitted the use of these forms in the application process for photo-identification cards and driver's licenses. Federal prosecutors in the case strongly encouraged elimination of the forms.

On September 21, 2001, the DL-51 was eliminated by emergency regulatory action and hence, photo-identification cards and driver's licenses issued after that date are less likely to be the product of fraudulent DL-51s. Permanent repeal of 24VAC20-70-30 (D) is necessary to ensure that driver's licenses, commercial driver's licenses, endorsements, photo-identification cards, learner's permits and temporary driver's permits are henceforth issued under the strictest and most reliable standards possible.

This action is essential to protect public safety and welfare and enhance state and national security. The abuse and misuse of the application process by criminal organizations, facilitators and those who seek to carry out attacks against the United States and its citizens results in the issuance of driver's licenses and identification cards based upon false identity and/or address information and poses a threat to public health, safety and security by hindering the ability of DMV and law enforcement to accurately identify and locate individuals. These documents tend to be breeder documents and are used by the bearer to accumulate additional identification documents to further substantiate the individual's potentially fraudulent identity, residency and/or location. Furthermore, as long as documents which are subject to abuse are utilized in the driver's license and identification card application process, criminal organizations, facilitators and their agents will continue to utilize the process to victimize immigrants seeking such documentation.

Alternatives

Please describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action.

One alternative to this proposal which has been considered is administrative action by the agency. However, the regulatory action appears to be necessary in order to eliminate acceptability and use of the DL-51 and to ensure that photo-identification cards and driver's licenses, the primary means of identification for so many important and fundamental functions and services, are issued using a reliable process and valid documentation.

The abuse and misuse of the DL-51 by criminal organizations, facilitators and their agents results in the issuance of driver's licenses and identification cards based upon false

identity and/or address information and poses a threat to public health and safety by hindering the ability of DMV and law enforcement to accurately identify and locate individuals. Abuse of the DL-51 was potentially widespread and was increasing at such an alarming rate that the only feasible means of eliminating abuse would be to permanently terminate use of the form. Because of the large numbers of DL-51s which were submitted to DMV when the form was in use, it became apparent that the alternative of implementing detection and enforcement procedures would not be feasible.

Family Impact Statement

Please provide a preliminary analysis of the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The potential impact upon families will be to alter the process and tighten the standards by which applicants (family members) are able to obtain driver's licenses and identification cards. Driver's licenses and photo identification cards are often used to identify the individual for purposes of various critical life-functions, including but not limited to, employment, obtaining government-provided benefits, law enforcement, and cashing checks and while the proposed regulatory action will heighten the requirements associated with obtaining these documents, the result will be documents that are more reliable as forms of identification. The action is expected to have no impact upon families in the four factors provided above.